

COMMODITY FUTURES TRADING COMMISSION

SEPTEMBER 9, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FOLEY, from the Committee on Agriculture,
submitted the following

REPORT

[Including cost estimate of the Congressional Budget Office]

[To accompany S. 3051]

The Committee on Agriculture, to whom was referred the bill (S. 3051), to amend the Commodity Futures Trading Commission Act of 1974, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 2, line 4, strike out all after the words "is amended" through the end of the sentence on line 7 and insert in lieu thereof the following:

by striking out in subsection (2) the words "thirty days" and inserting in lieu thereof the words "six months".

Page 2, immediately after line 15, insert the following new sections:

SEC. 7. Section 217 of the Commodity Futures Trading Commission Act of 1974 (7 U.S.C. 15a) is amended by striking such section.

SEC. 8. (a) The Commodity Exchange Act, as amended, is amended by inserting the following new section immediately after section 18 (7 U.S.C. 22):

SEC. 19. No person shall offer to enter into, enter into or confirm the execution of any transaction for the delivery of silver bullion, gold bullion, or bulk silver coins or bulk gold coins, pursuant to a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract contrary to any rule, regulation, or order of the Commission designed to insure the financial solvency of the transaction or prevent manipulation or fraud: *Provided*, That such rule, regulation, or order may be made

only after notice and opportunity for hearing. If the Commission determines that any such transaction is a contract for future delivery within the meaning of this Act, such transaction shall be regulated in accordance with the applicable provisions of this Act.

(b) Section 9(c) of the Commodity Exchange Act, as amended (7 U.S.C. 13(c)), is amended—

- (1) By deleting the word "or" after "section 4o."; and
- (2) by inserting the words "or section 19," after "section 8b,".

PURPOSE AND NEED FOR THE LEGISLATION

S. 3051, as amended by the Committee on Agriculture, provides a number of technical changes in the Commodity Exchange Act, as amended, to facilitate regulation of futures trading by the Commodity Futures Trading Commission established by the Commodity Futures Trading Commission Act of 1974.

The Commodity Futures Trading Commission Act of 1974 made extensive changes in the Commodity Exchange Act, bringing under Federal regulation all agricultural and other commodities, goods, and services traded on exchanges, and otherwise strengthening the regulation of the nation's \$600 billion commodity futures industry. The Commodity Exchange Act is designed to insure fair practices and honest dealing on the commodity exchanges.

One of the most significant changes made by the 1974 Act was the creation of the Commodity Futures Trading Commission, an independent regulatory agency consisting of a Chairman and four other Commissioners.

The Commission has been in existence slightly over 15 months during which time it has completed a major job of organization and has begun to carry out its statutory mandate. It has made progress in the task provided it under the Act. A description of the activities of the CFTC is contained in testimony of the Vice Chairman of the Commission as discussed in the Committee Consideration portion of this report.

During the course of its work the Commodity Futures Trading Commission encountered several provisions in the Act which it believes are in need of technical change. S. 3051, as amended, contains the changes requested by the Commission.

The 1974 Act provides, among other things, that the Commission is to have "an Executive Director, who shall be appointed by the Commission, by and with the advice and consent of the Senate, and serve at the pleasure of the Commission."

In approving the Commodity Futures Trading Commission Act of 1974 on October 23, 1974, President Ford stated that the Act provided for the appointment of the Executive Director in a manner not contemplated by the Constitution.

In *Buckley v. Valeo*, 96 Sup. Ct. 612 (1976), the Supreme Court held that the Federal Election Commission could not perform Executive Branch functions and at the same time have members of the Commission appointed by Congress. The Court, in holding that the method of appointing the Commission violated the separation of

powers, considered the appointments clause of the Constitution (Article II, Clause 2) and concluded that—

Unless their selection is elsewhere provided for in the Constitution, all officers of the United States are to be appointed in accordance with the Clause. Principal officers are selected by the President with the advice and consent of the Senate. Inferior officers Congress may allow to be appointed by the President alone, by the heads of departments, or by the judiciary. No class or type of officer is excluded because of its special functions. 96 Sup. Ct. at 688.

To remove any Constitutional question regarding the appointment of the Executive Director, S. 3051, as amended, deletes the requirement that the appointment be made "by and with the advice and consent of the Senate".

S. 3051, as amended, also would enable the Commodity Futures Trading Commission to grant "use" immunity to witnesses in proceedings before the Commission. The Commodity Exchange Authority, the agency which regulated futures trading prior to the enactment of the Commodity Futures Trading Commission Act of 1974, was able to grant such immunity since it was an agency of the Department of Agriculture, an "executive department" within the context of section 6001 of title 18 of the United States Code.

S. 3051, as amended, would simply add the Commission to the list of agencies authorized to grant immunity according to provisions of title 18.

S. 3051, as amended, also makes other technical changes in the Commodity Exchange Act.

Section 4c of the Act is amended to make it conform with other provisions of the Act relating to the affirmative approval of exchange rules by the Commission. Prior to the enactment of the 1974 Act, rules were subject only to disapproval by the Secretary of Agriculture.

Section 4g(3) of the Act is amended to make it clear that floor brokers (not simply "brokers") are the persons required to maintain daily trading records in a specified manner and form.

Section 4n of the Act is amended to extend from 30 days to 6 months the time for acting on the registration of any commodity trading advisor or commodity pool operator. It has been the experience of the Commission that 30 days is an insufficient period of time for the completion of a thorough fitness check of applicants.

Section 4o of the Act generally makes it unlawful for any commodity trading advisor or commodity pool operator "registered under this Act" to defraud any client or participant. S. 3051, as amended, strikes the phrase "registered under this Act" and substitutes therefor the phrase "who is or should be registered under this Act." The intent of section 4o would be thwarted if persons conducting themselves as commodity trading advisors or commodity pool operators could escape the applicability of the prohibitions in the section by not registering. The bill, therefore, makes it clear that the antifraud provisions apply to those persons who are required by the Act to be registered as trading advisors or pool operators but who have in fact not registered.

Sections 7 and 8 would transfer the provisions of section 217 of the Commodity Futures Trading Commission Act of 1974 into the Commodity Exchange Act, as amended. Section 217 of the CFTC Act provides that no one shall conduct transactions commonly known to the trade as leverage contracts or margin contracts contrary to any rule, regulation or order of the CFTC designed to insure the financial solvency of the transaction or to prevent fraud or manipulation. The provision applies to transactions involving silver or gold bullion, or bulk silver or gold coins.

Although enacted with other provisions of the 1974 amendments to the Commodity Exchange Act, section 217, itself, did not constitute an amendment to the Commodity Exchange Act; it is solely a provision of the Commodity Futures Trading Commission Act of 1974. While it is clear from section 207 that the criminal penalties of section 9(c) of the Commodity Exchange Act apply to violators of its provisions, there is a question whether the transactions addressed by section 217 are subject to other enforcement authority contained in the Commodity Exchange Act.

This proposed amendment would bring the section 217 provisions fully within the Commodity Exchange Act, as amended, thus enabling the Commission to utilize without question its full complement of enforcement authority in regulating leverage contracts.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill amends section 2(a)(5) of the Commodity Exchange Act by repealing the requirement that the appointment of the executive director of the Commodity Futures Trading Commission be subject to confirmation by the Senate.

Section 2 of the bill conforms section 4c(a) of the Commodity Exchange Act with other provisions in the Act requiring the Commission's prior approval of contract market rules.

Section 3 of the bill substitutes the words "Floor brokers" for "Brokers" in section 4g(3) of the Act, which requires the maintenance of daily trading records in a specified manner and form. The term "floor broker" is defined in section 2(a)(1) of the Act, and the word "broker" does not appear in any section of the Act other than section 4g(3).

Section 4 of the bill amends section 4n of the Commodity Exchange Act by extending from 30 days to six months the time when the registration of any commodity trading advisor or commodity pool operator is to become effective after the Commission's receipt of the application. The amendment will allow the Commission additional time to make fitness checks. (The amendment is not in any way intended to delay the registration of applicants. The Commission would be expected to complete fitness checks on all applicants as expeditiously as possible.)

Section 5 of the bill amends section 4o of the Commodity Exchange Act to make it clear that the antifraud provisions currently applicable to commodity pool operators registered under the Act also apply to persons who are required by the Act to register as such but who have in fact not so registered.

Section 6 of the bill amends title 18 of the United States Code to enable the Commodity Futures Trading Commission to grant "use"

immunity to witnesses appearing before the Commission, consistent with the practice of other independent regulatory agencies.

Sections 7 and 8 of the bill transfer to the Commodity Exchange Act prohibitions now contained in the Commodity Futures Trading Commission Act against leverage and margin contracts contrary to rules and regulations of the CFTC. These provisions are designed to prevent fraud or manipulation in transactions involving silver and gold. The transfer to the Commodity Exchange Act would clarify that the CFTC could make use of civil remedies as well as criminal penalties against violators.

COMMITTEE CONSIDERATION

The Subcommittee on Conservation and Credit held a hearing on August 10, 1976, on S. 3051 and H.R. 12571, a bill introduced by Mr. Foley containing similar provisions to S. 3051. Testimony was provided by John Rainbolt, Vice Chairman of the Commodity Futures Trading Commission who supported adoption of the legislation which had been introduced in both Houses of Congress at the request of the administration.

Mr. Rainbolt reviewed the activities carried by the CFTC in the short period since it began operation. He summarized its work to date as follows:

"The Commission has now been in existence slightly over 15 months—and we have a better grasp of the problems associated with regulation of the industry than when the first four members of the Commission were sworn in only days before the effective date of the new Act—April 21, 1975.

"Since that time, we have designated 10 contract markets for trading in 48 commodities; and registered over 24,500 individuals as commodity trading advisors, commodity pool operators, futures commission merchants and associated persons, as required by law. Pursuant to our exchange rule approval authority, we have actively reviewed rules of contract markets and over 100 rules and rule change requests by exchanges have been examined and approved. Working with exchanges we have approved additional delivery points for corn, thus eliminating a potential barrier to delivery by producers on that contract.

"We have used the new authority provided by the Act to obtain injunctions against fraudulent acts and practices which previously bilked the public and harmed the image of the industry. In order to obtain producer, public and industry input into our decision-making, we chartered an extensive Advisory Committee program under which approximately a dozen major Commission objectives were analyzed by four public Advisory Committees, each chaired by a Commissioner.

"Putting together—correctly—the agency you envisioned in the Act has not been an automatic exercise. By and large, we feel we have been earning our pay—and making progress in obtaining the goal of realistic regulation in today's economic and political environment.

"During the course of our work with the Commodity Exchange Act, as amended by the Commodity Futures Trading Commission Act of 1974—we have come across several desirable technical changes in the Act itself that we believe should be addressed.

"In many respects working with the Act has been like buying a new house: we have had to move in before discovering there were not enough electrical outlets in some rooms and that the furnace clanks in the winter. Needless to say, the house—in this case the Act—is sound and is standing the tests it has been subjected to thus far.

"It is in that spirit that the Commission supports the changes embodied in the legislation before you."

Mr. Rainbolt suggested that another amendment be considered with the original proposed by the Commission which would integrate the provisions of section 217 of the Commodity Futures Trading Commission Act of 1974 into the Commodity Exchange Act in order to make clear that the CFTC could make use of certain enforcement authorities in implementing the prohibition against fraud and manipulation.

The Subcommittee held a markup session on August 25, 1976, and after discussion voted to report S. 3051 with two amendments. One related to section 4 of S. 3051 which repealed the provision that registration of commodity trading advisors or commodity pool operators would become effective thirty days after receipt of the application. The Subcommittee decided instead to extend the period from 30 days to 6 months rather than removing the deadline date entirely in order to insure prompt action on the part of the Commission.

In addition, the Subcommittee agreed to an amendment which became sections 7 and 8 of the bill to carry out the request of the Commodity Futures Trading Commission with respect to section 217 of the Commodity Futures Trading Commission Act of 1974.

Action to report the bill to the full Committee with the recommendation that it pass was taken by a unanimous voice vote in the presence of a quorum.

The full Committee considered S. 3051 in a business session held on September 2, 1976. Prior to taking action it sought the views of the Chairman of the Judiciary Committee on the provisions of the bill which would amend title 18 of the United States Code in order to grant use immunity to witnesses appearing before the Commission. The Committee was advised by Mr. Rodino that at the request of the CFTC he had introduced H.R. 12253 which made the same amendment to title 18 as the provision in S. 3051. He advised that the Judiciary Committee had not held hearings on the bill, but that he felt the provision was "unobjectionable."

The Committee then voted to report the bill S. 3051, together with the amendments recommended by the Subcommittee, with the recommendation that it pass. Action was taken by a voice vote in the presence of a quorum.

ADMINISTRATION POSITION

A letter from the Commission requesting enactment of this legislation reads as follows:

COMMODITY FUTURES TRADING COMMISSION,
Washington, D.C., February 9, 1976.

HON. CARL ALBERT,
Speaker of the House,
U.S. House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: Enclosed is a draft bill, 94-2, which would amend the Commodity Futures Trading Commission Act of 1974. This

law created the Commodity Futures Trading Commission through a comprehensive revision of the Commodity Exchange Act. The proposed bill first would repeal the requirements of the Commodity Futures Trading Commission Act that the Commission's appointment of its Executive Director be effected by and with the advice and consent of the Senate. The Justice Department and the Library of Congress have criticized the present language which provides for the appointment of a government officer in a manner not contemplated by the Constitution. Additionally, the bill would correct several deficiencies in the present language of the statute. None of these changes would affect Commission policy, management or budget. They are technical in nature. Accompanying the draft are explanations of its provisions, as well as comparisons with existing language.

We respectfully request that this bill be referred to the appropriate Committee for consideration and that it be enacted.

We feel the enactment of this bill would significantly improve our ability to meet the obligations which Congress set forth in the 1974 Act.

Since we are concurrently and voluntarily transmitting copies of this proposal to the Office of Management and Budget, we respectfully request that this letter constitute notice to the Committee on Agriculture pursuant to Section 2(a)(9) of the Commodity Exchange Act, as amended.

Sincerely,

WILLIAM T. BAGLEY,
Chairman.

CURRENT AND FIVE SUBSEQUENT FISCAL YEAR COST ESTIMATE

Pursuant to clause 7 of rule XIII of the Rules of the House of Representatives, the Committee estimates that there would be no cost to the Government during the current and five subsequent fiscal years.

The same cost estimate was submitted to the Committee by the Commodity Futures Trading Commission and the Congressional Budget Office.

BUDGET ACT COMPLIANCE (SECTION 308 AND SECTION 403)

The provisions of clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority or new or increased tax expenditures) are not considered applicable. A letter prepared by the Director of the Congressional Budget Office under clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report reads as follows:

CONGRESS OF THE UNITED STATES,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 3, 1976.

HON. THOMAS S. FOLEY,
*Chairman, Committee on Agriculture, U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed

H.R. 12571, a bill to amend the Commodity Futures Training Commission Act of 1974 to make certain technical changes.

Based on this review, it appears that no additional cost to the Government would be incurred as a result of enactment of this bill.

Sincerely,

ALICE M. RIVLIN, *Director.*

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1) (4) of rule XI of the Rules of the House of Representatives, the Committee estimates that enactment of S. 3051, as amended, will have no inflationary impact on the national economy.

OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Operations under clause 2(b) (2) of rule X of the Rules of the House of Representatives was available to the Committee with reference to the subject matter specifically addressed by S. 3051, as amended.

No specific oversight activities, other than the hearings accompanying the Committee's consideration of S. 3051 were conducted by the Committee within the definition of clause 2(b) (1) of rule X of the Rules of the House of Representatives.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman) :

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COMMODITY EXCHANGE ACT

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SEC. 2. (a) * * *

(5) The Commission shall have an Executive Director, who shall be appointed by the Commission¹, by and with the advice and consent of the Senate,² and serve at the pleasure of the Commission. The Executive Director shall report directly to the Commission and perform such functions and duties as the Commission may prescribe.

* * * * *

SEC. 4c. (a) It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution, of any transaction involving any commodity, which is or may be used for: (1) hedging any transaction in interstate commerce in such commodity or the products or by-products thereof, or (2) determining the price of any such transaction in interstate commerce in such commodity, or (3) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

(A) if such transaction is, is of the character of, or is commonly known to the trade as, a "wash sale", "cross trade", or "accommodation trade", or is a fictitious sale:

(B) if such transaction involves any commodity specifically set forth in section 2(e) of this Act, prior to the enactment of the Commodity Futures Trading Commission Act of 1974, and if such transaction is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", or

(C) if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price.

Nothing in this section shall be construed to prevent the exchange of futures in connection with cash commodity transactions or of futures for cash commodities, or of transfer trades or office trades if made in accordance with board of trade rules applying to such transactions and such rules shall [not have been disapproved] *have been approved* by the Commission.

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SEC. 4g * * *

(2) Every clearinghouse and contract market shall maintain daily trading records. The daily trading records shall include such information as the Commission shall prescribe by rule.

(3) [Brokers] *Floor brokers* and futures commission merchants shall maintain daily trading records for each customer in such manner and form as to be identifiable with the trades referred to in subsection (2).

* * * * *

SEC. 4n. (1) Any commodity trading advisor or commodity pool operator, or any person who contemplates becoming a commodity trading advisor or commodity pool operator, may register under this Act by filing an application with the Commission. Such application shall contain such information, in such form and detail, as the Commission may, by rules and regulations, prescribe as necessary or appropriate in the public interest, including the following:

(A) the name and form of organization, including capital structure, under which the applicant engages or intends to engage in business; the name of the State under the laws of which he is organized; the location of his principal business office and branch offices, if any; the names and addresses of all partners, officers, directors, and persons performing similar functions or, if the applicant be an individual, of such individual; and the number of employees;

(B) the education, the business affiliations for the past ten years, and the present business affiliations of the applicant and of his partners, officers, directors, and persons performing similar functions and of any controlling person thereof;

(C) the nature of the business of the applicant, including the manner of giving advice and rendering of analyses or reports;

(D) the nature and scope of the authority of the applicant with respect to clients' funds and accounts;

(E) the basis upon which the applicant is or will be compensated; and

(F) such other information as the Commission may require to determine whether the applicant is qualified for registration.

(2) Except as hereinafter provided, such registration shall become effective [thirty days] *six months* after the receipt of such application

by the Commission, or within such shorter period of time as the Commission may determine.

(3) All registrations under this section shall expire on the 30th day of June of each year, and shall be renewed upon application therefor subject to the same requirements as in the case of an original application.

(4) (A) Every commodity trading advisor and commodity pool operator registered under this Act shall maintain books and records and file such reports in such form and manner as may be prescribed by the Commission. All such books and records shall be kept for a period of at least three years, or longer if the Commission so directs, and shall be open to inspection by any representative of the Commission or the Department of Justice. Upon the request of the Commission, a registered commodity trading advisor or commodity pool operator shall furnish the name and address of each client, subscriber, or participant, and submit samples or copies of all reports, letters, circulars, memorandums, publications, writings, or other literature or advice distributed to clients, subscribers, participants, or prospective clients, subscribers, or participants.

(B) Unless otherwise authorized by the Commission by rule or regulation, all commodity trading advisors and commodity pool operators shall make a full and complete disclosure to their subscribers, clients, or participants of all futures market positions take or held by the individual principals of their organization.

(5) Every commodity pool operator shall regularly furnish statements of account to each participant in his operations. Such statements shall be in such form and manner as may be prescribed by the Commission and shall include complete information as to the current status of all trading accounts in which such participant has an interest.

(6) The Commission is authorized, without hearing, to deny registration to any person as a commodity trading advisor or commodity pool operator if such person is subject to an outstanding order under this Act denying to such person trading privileges on any contract market, or suspending or revoking the registration of such person as a commodity trading advisor, commodity pool operator, futures commission merchant, or floor broker, or suspending or expelling such person from membership on any contract market.

(7) The Commission after hearing may by order deny registration, revoke or suspend the registration of any commodity trading advisor or commodity pool operator if the Commission finds that such denial, revocation, or suspension is in the public interest and that—

(A) the operations of such person disrupt or tend to disrupt orderly marketing conditions, or cause or tend to cause sudden or unreasonable fluctuations or unwarranted changes in the prices of commodities;

(B) such commodity trading advisor or commodity pool operator, or any partner, officer, director, person performing similar function or controlling person thereof—

(i) has within ten years of the issuance of such order been convicted of any felony or misdemeanor involving the purchase or sale of any commodity or security, or arising out of any conduct or practice of such commodity trading advisor

or commodity pool operator or affiliated person as a commodity trading advisor or commodity pool operator; or

(ii) at the time of the issuance of such order, is permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction from acting as a commodity trading advisor, commodity pool operator, futures commission merchant, or floor broker, or as an affiliated person or employee of any of the foregoing, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of commodities or securities; or

(C) any partner, officer, or director of such commodity trading advisor or commodity pool operator, or any person performing a similar function or any controlling person thereof is subject to an outstanding order to the Commission denying trading privileges on any contract market to such a person, or suspending or revoking the registration of such person as a commodity trading advisor, commodity pool operator, futures commission merchant, or floor broker, or suspending or expelling such person from membership on any contract market.

SEC. 40. (1) It shall be unlawful for any commodity trading advisor or commodity pool operator [registered under this Act] *who is or should be registered under this Act*, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—

(A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or

(B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

* * * * *

SEC. 9. (a) It shall be a felony punishable by a fine of not more than \$100,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any futures commission merchant, or any employee or agent thereof, to embezzle, steal, purloin, or with criminal intent convert to his own use or the use of another, any money, securities, or property having a value in excess of \$100, which was received by such commission merchant to margin, guarantee, or secure the trades or contracts of any customer of such commission merchant or accruing to such customer as the result of such trades or contracts. The word "value" as used in this paragraph means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

(b) It shall be a felony punishable by a fine of not more than \$100,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any contract market, or to corner or attempt to corner any such commodity, or knowingly to deliver or cause to be delivered for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or condi-

tions that affect or tend to affect the price of any commodity in interstate commerce.

(c) Except as provided in paragraphs (a) and (b) of this section, it shall be a misdemeanor punishable by a fine of not more than \$100,000 or imprisonment for not more than one year, or both, together with the costs of prosecution, for any person to violate the provisions of section 4, section 4a, section 4b, section 4c, section 4d, section 4e, section 4h, section 4i, section 4k, section 4m, section 4o **[or]** section 8b, *or section 19*, or to fail to evidence any contract mentioned in section 4 of this Act by a record in writing as therein required.

(d) It shall be a felony punishable by a fine of not more than \$10,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any Commissioner of the Commission or any employee or agent thereof, to participate, directly or indirectly, in any transaction in commodity futures or any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty," or for any such person to participate, directly or indirectly, in any investment transaction in an actual commodity: *Provided*, That such prohibition against any investment transaction in an actual commodity shall not apply to a transaction in which such person buys an agricultural commodity or livestock for use in his own farming or ranching operations or sells an agricultural commodity which he has produced in connection with his own farming or ranching operations nor to any transaction in which he sells livestock which he has owned at least three months. With respect to such excepted transactions, the Commission shall require any Commissioner of the Commission or any employee or agent thereof who participates in any such transaction to notify the Commission thereof in accordance with such regulations as the Commission shall prescribe and the Commission shall make such information available to the public.

(e) It shall be a felony punishable by a fine of not more than \$10,000 or imprisonment for not more than five years, or both, together with the costs of prosecution—(1) for any Commissioner of the Commission or any employee or agent thereof who, by virtue of his employment or position, acquires information which may affect or tend to affect the price of any commodity futures or commodity and which information has not been made public to impart such information with intent to assist another person, directly or indirectly, to participate in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty"; and (2) for any person to acquire such information from any Commissioner of the Commission or any employee or agent thereof and to use such information in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty".

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SEC. 19. No person shall offer to enter into, enter into, or confirm the execution of any transaction for the delivery of silver bullion, gold bullion, or bulk silver coins or bulk gold coins, pursuant to a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract contrary to any rule, regulation, or order of the Commission designed to insure the financial solvency of the transaction or prevent manipulation or fraud: Provided, That such rule, regulation, or order may be made only after notice and opportunity for hearing. If the Commission determines that any such transaction is a contract for future delivery within the meaning of this Act, such transaction shall be regulated in accordance with the applicable provisions of this Act.

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TITLE 18, UNITED STATES CODE

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§ 6001. Definitions

As used in this part—

(1) "agency of the United States" means any executive department as defined in section 101 of title 5, United States Code, a military department as defined in section 102 of title 5, United States Code, the Atomic Energy Commission, the China Trade Act registrar appointed under 53 Stat. 1432 (15 U.S.C. sec. 143), the Civil Aeronautics Board, the *Commodity Futures Trading Commission*, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Maritime Commission, the Federal Power Commission, the Federal Trade Commission, the Interstate Commerce Commission, the National Labor Relations Board, the National Transportation Safety Board, the Railroad Retirement Board, an arbitration board established under 48 Stat. 1193 (45 U.S.C. sec. 157), the Securities and Exchange Commission, the Subversive Activities Control Board, or a board established under 49 Stat. 31 (15 U.S.C. sec. 715d);

(2) "other information" includes any book, paper, document, record, recording, or other material;

(3) "proceeding before an agency of the United States" means any proceeding before such an agency with respect to which it is authorized to issue subpoenas and to take testimony or receive other information from witnesses under oath; and

(4) "court of the United States" means any of the following courts: the Supreme Court of the United States, a United States court of appeals, a United States district court established under chapter 5, title 28, United States Code, the District of Columbia Court of Appeals, the Superior Court of the District of Columbia, the District Court of Guam, the District Court of the Virgin Islands, the United States Court of Claims, the United States Court of Customs and Patent Appeals, the Tax Court of the United States, the Customs Court, and the Court of Military Appeals.

§ 6002. Immunity generally

Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to—

(1) a court or grand jury of the United States,

(2) an agency of the United States, or

(3) either House of Congress, a joint committee of the two

Houses, or a committee or a subcommittee of either House, and the person presiding over the proceeding communicates to the witness an order issued under this part, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

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COMMODITY FUTURES TRADING COMMISSION ACT OF 1974

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SEC. 217. [(a) No person shall offer to enter into, enter into, or confirm the execution of any transaction for the delivery of silver bullion, gold bullion, or bulk silver coins or bulk gold coins, pursuant to a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract contrary to any rule, regulation, or order of the Commodity Futures Trading Commission designed to insure the financial solvency of the transaction or prevent manipulation or fraud: *Provided*, That such rule, regulation, or order may be made only after notice and opportunity for hearing. If the Commission determines that any such transaction is a contract for future delivery within the meaning of the Commodity Exchange Act, as amended, such transaction shall be regulated in accordance with the provisions of such Act.]

[(b) The provisions of section 9(c) of the Commodity Exchange Act, as amended, shall be applicable with respect to persons who violate the provisions of this section.]



